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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,931	04/30/2001	Manuel Gonzalez	60004114-1	9896

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EXAMINER

NGUYEN, PHUOC H

ART UNIT

PAPER NUMBER

2143

DATE MAILED: 03/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/843,931	GONZALEZ ET AL.
	Examiner	Art Unit
	Phuoc H. Nguyen	2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 December 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 3,4,6,7,10,18-20,22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 3,4,6,7,10,18-20,22 and 23 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Response to Amendment

1. This office action is in response to the amendment filed on December 16, 2004. Previous office action contained claims 1-26. Applicant amended claims 3, 6, 10, 18, 22, and cancelled claims 1-2, 5, 8-9, 11-17, 21, and 24-26. Amendment filed on December 16, 2004 have been entered and made of record. Therefore, pending claims 3-4, 6-7, 10, 18-20, and 22-23 are presented for further consideration and examination.

Response to Arguments

2. Applicant's arguments filed 12/16/2004 have been fully considered but they are not persuasive.

a. The applicant argued in pages 11-12, 16-18 for claims 3, 18, and 22 that the inherency is used in the rejection of claim 3 which does not disclose a step of determining whether a proximate end to scheduled period of time has occurred in response to retry period of time continuing, proximate end being an instance in time prior to an end of scheduled period of time such that a transmission beginning at the proximate end completes prior to the end of scheduled period of times.

The examiner respectfully submits that inherency is used for the fact that it logically makes the most sense. Given the amount of time without resume function, if the file cannot be completely finished downloading then it must not be downloaded at first otherwise it would waste the bandwidth. To further support the inherency, the examiner cites column 4 lines 4-20 to

clearly indicated that a step 311 is used to determine if there is a sufficient bandwidth available to download the requested data and particularly different applications may have differing definitions with regard to what constitutes sufficient bandwidth wherein sufficient bandwidth would constitute a means as sufficient time.

b. The applicant argued in page 13 for claim 6 that the cited reference does not anticipate the subject matter or limitations cited in claim 6 such as comparing a re-measured data transfer to predetermined threshold in response to proximate end to scheduled period of time not occurring.

The examiner respectfully submits that the cited reference clearly discloses in Figure 3 a comparing (e.g. 319 in a second or last round of download) a re-measured data transfer to predetermined threshold in response to proximate end to scheduled period of time not occurring (e.g. feedback through 303).

c. The applicant argued in page 15 for claim 10 that the cited reference does not anticipate the subject matter or limitations cited in claim 10 such as a step of requesting information from first device prior to step of comparing, information includes scheduled period of time.

The examiner respectfully submits that cited reference clearly discloses a step of requesting information from first device prior to step of comparing, information includes scheduled period of time (e.g. abstract lines 8-15).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 3-4, 6-7, 10, 18-20, and 22-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Engbersen et al. (Hereafter, Engbersen) U.S. 6,341,304.

5. Regarding claim 3, Engbersen discloses in Figure 3 a method of transmitting information from a first device (e.g. server to download from) to a second device (e.g. start point in 301 or client to download to), the method comprising steps of: comparing a data transfer rate to a predetermined threshold (e.g. 309 and 311), data transfer rate being related to the rate of transmission of information from first device to second device (e.g. 309 wherein checking the available bandwidth); transmitting information from first device during a scheduled period of time in response to data transfer rate exceeding predetermined threshold (e.g. if yes, go to 315 to download); and preventing a transmission of information at a beginning of scheduled period of time in response to data transfer rate not exceeding predetermined threshold (e.g. 313), wherein step of comparing data transfer rate to a predetermined threshold further comprises steps of: determining whether a retry period of time has ended in response to data transfer rate being below predetermined threshold (e.g. 313); canceling transmission of information during scheduled period of time in response to retry period of time ending (e.g. 313); and comparing a re-measured data transfer rate to predetermined threshold in response to retry period of time not ending (e.g. loop feedback into the beginning system to 303), wherein step of comparing a data transfer rate to a predetermined threshold further comprises steps of: determining whether a proximate end to scheduled period of time has occurred in response to retry period of time continuing; proximate end being an instance in time prior to an end of scheduled period of time,

such that a transmission beginning at the proximate end completes prior to the end of scheduled period of time (e.g. col. 4 lines 5-18, particularly lines 7-8); canceling transmission of information during scheduled period of time in response to an occurrence of proximate end (e.g. 313); and performing step of comparing re-measured data transfer rate to predetermined threshold in response to proximate end to scheduled period of time not occurring (e.g. 319 and 323).

6. Regarding claim 4, Engbersen further discloses in Figure 3 step of transmitting information from first device further comprises a step of transmitting information from first device during scheduled period of time in response to re-measured data transfer rate exceeding predetermined threshold (e.g. 317 and 319).

7. Regarding claim 6, Engbersen discloses in Figure 3 method of transmitting information from a first device (e.g. server to download from) to a second device (e.g. start point in 301 or client to download to), the method comprising steps of: comparing a data transfer rate to a predetermined threshold (e.g. 309 and 311), data transfer rate being related to the rate of transmission of information from first device to second device (e.g. 309 wherein checking the available bandwidth); transmitting information from first device during a scheduled period of time in response to data transfer rate exceeding predetermined threshold (e.g. if yes, to go 315 to download); and preventing a transmission of information at a beginning of scheduled period of time in response to data transfer rate not exceeding predetermined threshold (e.g. 313), wherein step of transmitting information from first device further comprises steps of: comparing a data transfer rate of transmitting information to predetermined threshold; and terminating transmission of information in response to data transfer rate not exceeding predetermined

threshold (e.g. 323 to 313), wherein step of transmitting information from first device further comprises steps of: determining whether a retry period of time has ended in response to data transfer rate not exceeding predetermined threshold (e.g. 313 and col. 4 lines 5-15 and 25-29); canceling transmission of information during scheduled period of time in response in response to retry period of time ending (e.g. abort in 313); and comparing a re-measured data transfer rate to predetermined threshold in response to a proximate end to scheduled period of time not occurring (e.g. feedback into the beginning system in Figure 3).

8. Regarding claim 7, Engbersen further discloses in Figure 3 step of transmitting information from first device further comprises a step of transmitting information from first device during scheduled period of time in response to re-measured data transfer rate exceeding predetermined threshold (e.g. 323 to 313).

9. Regarding claim 10, Engbersen discloses in Figure 3 method of transmitting information from a first device (e.g. server to download from) to a second device (e.g. start point in 301 or client to download to), the method comprising steps of: comparing a data transfer rate to a predetermined threshold (e.g. 309 and 311), data transfer rate being related to the rate of transmission of information from first device to second device (e.g. 309 wherein checking the available bandwidth); transmitting information from first device during a scheduled period of time in response to data transfer rate exceeding predetermined threshold (e.g. if yes, go to 315 to download); preventing a transmission of information at a beginning of scheduled period of time in response to data transfer rate not exceeding predetermined threshold (e.g. 313); and requesting information from first device prior to step of comparing, wherein information includes scheduled period of time (e.g. 303, 307, and 309; and abstract).

10. Regarding claim 18, it is a partial computer medium claim of claim 3. Thus, claim 18 is also rejected under the same rationale as cited in the rejection of rejected claim 3.

11. Regarding claim 19, it is a partial computer medium claim of claim 3. Thus, claim 19 is also rejected under the same rationale as cited in the rejection of rejected claim 3.

12. Regarding claim 20, Engbersen further discloses in Figure 3 step of comparing is performed during transmission of information and step of preventing further comprises a step of terminating transmission of information at a beginning of scheduled period of time in response to data transfer rate not exceeding predetermined threshold (e.g. 313 and col. 4 lines 25-29).

13. Regarding claim 22, it has limitations cited in claim 3. Thus, claim 22 is also rejected under the same rationale as cited in the rejection of rejected claim 3.

14. Regarding claim 23, Engbersen further discloses in Figure 3 network node is further operable to transmit information during scheduled period of time in response to re-measured data transfer rate exceeding predetermined threshold (e.g. 317 and 319).

Conclusion

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuoc H. Nguyen whose telephone number is 571-272-3919. The examiner can normally be reached on Mon -Thu (7AM-4: 30PM) and off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Phuoc H. Nguyen
Examiner
Art Unit 2143

March 17, 2005



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